# BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

JAMES R. LINTHICUM	)
Claimant	
VS.	)
	) Docket No. 247,747
FABPRO ORIENTED POLYMERS, INC.	)
Respondent	)
AND	
	)
TRAVELERS INSURANCE COMPANY	)
Insurance Carrier	)

# ORDER

Claimant appeals from an Order entered by Administrative Law Judge Nelsonna Potts Barnes on December 27, 1999. The Order denied claimant's request for preliminary benefits.

### ISSUES

The Administrative Law Judge found claimant did not give timely notice of injury as required by K.S.A. 44-520 and failed to establish just cause for that failure.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the Order should be affirmed.

Claimant alleges injury to his neck, left hand, arm, and shoulder, as well as his right hand, arm, and shoulder, from work done each day through February 15, 1999. The evidence establishes that claimant was off work after sometime in February 1999 and received treatment, including surgery by Dr. Michael P. Estivo. Claimant did not at that time ask respondent to provide treatment. Instead, claimant went to his own physician who referred claimant to Dr. Estivo. Dr. Estivo did surgery in March 1999, and Dr. Estivo now recommends additional surgery.

Claimant testified he reported the injury and its work-related nature to Mr. Dwight E. Osborn sometime before he left work for treatment. Claimant also testified he told Becky Birkenbaugh he would be off work for surgery. Respondent has presented evidence

directly contradictory in the form of a statement from Mr. Osborn. Respondent contends it did not receive any notice until August 1999. The evidence also establishes claimant had received treatment for upper extremity problems in the summer of 1998 and the record of that treatment indicates it was for a problem that had existed for approximately a year. Finally, the evidence establishes respondent provided training to advise employees of the need to give notice of any work-related injury and that claimant received this training.

The Board generally gives some deference to the ALJ's evaluation of credibility in cases where the ALJ has had the opportunity to observe the witness testify. In this case, both claimant and respondent's representative, Bill Amerine, testified before the ALJ. The ALJ did not believe claimant had provided notice, as claimant testified, before he left work for treatment to his arm. This conclusion is also supported, in part, by the fact claimant did not ask respondent to provide medical treatment. He went on his own, obtained surgery, and only after it appeared additional surgery might be necessary did he ask respondent to provide the care. Under these circumstances, the Board accepts the ALJ's evaluation of credibility. For this reason, the Board affirms the decision by the ALJ.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge Nelsonna Potts Barnes on December 27, 1999, should be, and the same is hereby, affirmed.

#### IT IS SO ORDERED.

Dated this	day of February 2000

## **BOARD MEMBER**

c: Stephen J. Jones, Wichita, KS
William L. Townsley, III, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director